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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 CINDY ELLEN OCHOA, an
8 individual,

9 Plaintiff,

10 v.

11 SERVICE EMPLOYEES
12 INTERNATIONAL UNION LOCAL
13 775, an unincorporated labor
14 association; CHERYL STRANGE in
15 her official capacity as SECRETARY
16 of the DEPARTMENT OF SOCIAL
AND HEALTH SERVICES; and JAY
INSLEE, in his official capacity as
GOVERNOR of the STATE OF
WASHINGTON,

Defendants.

NO. 2:18-CV-0297-TOR

ORDER GRANTING STATE
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

17 BEFORE THE COURT is Defendants Cheryl Strange and Jay Inslee's
18 Motion for Summary Judgment (ECF No. 50). The motion was submitted for
19 consideration without a request for oral argument. The Court has reviewed the
20 record and files herein and is fully informed. For the reasons discussed below, the

ORDER GRANTING STATE DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT ~ 1

1 motion (ECF No. 50) is **granted**.

2 **BACKGROUND**

3 This case concerns two sets of unauthorized withdrawals of union dues from
4 Plaintiff Cindy Ellen Ochoa’s pay—one set from 2016 to 2017 and another set of
5 withdrawals in mid-2018.

6 Plaintiff works as an “individual provider” contracting with the State of
7 Washington and the Department of Social and Health Services to provide care to
8 Medicaid eligible clients. Defendants are state officials, sued in their official
9 capacity, representing the State and the agency (hereinafter, collectively referred to
10 as “Defendants”). The Defendants are a party to a collective bargaining agreement
11 with the Service Employees International Union 775 (“SEIU 775”)—the union
12 which represents individual providers like Plaintiff. ECF No. 51 at 2, ¶ 4.

13 According to the agreement with SEIU 775—both at the time of the complained-of
14 withdrawals and currently—individual providers communicate directly with SEIU
15 775 about whether they wish to have dues deducted; SEIU 775 then passes the
16 information to Defendants, who provide the information to a third-party contractor
17 that processes the payments to individual providers, including the withholding of
18 union dues and other withholdings. ECF No. 51 at 2-3, ¶¶ 5-6.

19 The legal framework for withdrawing union dues has shifted over the
20 relevant time period. As of 2014, individual providers had the right to opt out of

1 paying union dues—without affirmatively opting out, the union dues would be
2 withdrawn. ECF No. 51 at 3, ¶ 7. On June 27, 2018, the Supreme Court
3 determined that union dues could only be withdrawn if the individual provider
4 opted in to paying union dues—without affirmatively opting in, the union dues
5 would not be withdrawn. ECF No. 51 at 4-5, ¶ 13. To account for this,
6 Defendants adjusted their procedures for withdrawing union dues soon after the
7 decision—i.e., requiring an affirmative opt in for the withdrawal of union dues.
8 ECF No. 51 at 5, ¶¶ 15-16.

9 Plaintiff exercised her right to opt out of paying union dues in 2014 and the
10 union dues withdrawals stopped at that time. *See* ECF No. 38 at 13, ¶ 77. Because
11 Plaintiff had opted out, Plaintiff would have had to affirmatively opt in for union
12 dues to be legitimately withdrawn. However, union dues were withdrawn from her
13 pay in 2016 to 2017 and again in 2018 without Plaintiff’s authorization.

14 1. First series of withdrawals

15 The first series of unauthorized withdrawals began on October 17, 2016 after
16 Defendants “received a dues interface file from SEIU 775 for [Plaintiff] indicating
17 dues should be withdrawn.” ECF No. 51 at 4, ¶ 11. The withdrawals stopped
18 around May of 2017 after Defendants “received a dues interface file from SEIU
19 775 on June 4, 2017, indicating [Plaintiff’s] dues withdrawal should cease.” ECF
20 No. 51 at 4, ¶ 12. According to Plaintiff, the dues were withdrawn based on a

1 forged signature allegedly manufactured by an agent of SEIU 775. ECF Nos. 59 at
2 4; 59-2 at 2, ¶ 1.

3 Plaintiff noticed the dues were being withheld from her pay “soon before
4 March 2017”. ECF No. 39 at 11, ¶ 64. Plaintiff alleges that she called the
5 Defendants’ third-party contractor and requested they stop withholding the union
6 dues on March 1, 2017 and thereafter until May 1, 2017, when the contractor
7 informed Plaintiff that she would need to contact SEIU 775 for assistance,
8 explaining: “the deduction order comes from the union [so] the release also must
9 come from the union”. ECF No. 39 at 12-14, ¶¶ 66-78.

10 “As soon as [Plaintiff] realized [the third-party contractor] could not help
11 her, she contacted SEIU 775.” SEIU 775 informed Plaintiff that “SEIU 775 was
12 withdrawing union dues from [Plaintiff’s] salary because [Plaintiff] had signed a
13 union membership card.” ECF No. 39 at 14, ¶ 80. Plaintiff denied authorizing
14 such and “demanded that she be shown the card”. ECF No. 39 at 14, ¶ 80. SEIU
15 775 sent Plaintiff a copy of the electronic signature dated May 28, 2016. ECF No.
16 39 at 14, ¶ 81. Upon receipt of the copy, Plaintiff “immediately recognized that
17 the signature was not her own” and “again contacted SEIU 775 and demanded that
18 they stop withdrawing dues from her salary, and remit the amount taken from her.”
19 ECF No. 39 at 14, ¶ 82. “In June 2017, Adam Glickman, secretary treasurer of
20 SEIU 775, sent [Plaintiff] a letter . . . admit[ing] . . . the electronic signature on the

1 card [did not match Plaintiff's] other signatures on file[.]” ECF No. 39 at 14-15, ¶
2 83. The letter included a check to Plaintiff returning \$358.94. ECF No. 39 at 15, ¶
3 83. “[I]n July 2017, SEIU 775 sent a second letter to [Plaintiff] returning an
4 additional \$51.12.” ECF No. 39 at 15, ¶ 84.

5 2. Second series of withdrawals

6 The second unauthorized withdrawal began in July 2018 and ended in
7 August 2018. ECF No. 39 at 16, ¶ 92. As with the first series of withdrawals,
8 Plaintiff had previously opted out, so she had to affirmatively opt in for dues to be
9 legitimately withdrawn. Plaintiff denies authorizing the withdrawals and, at the
10 time of filing suit, she did not know why the 2018 withdrawals began.

11 Despite her previous experience with the third-party contractor not being
12 able to help, Plaintiff again contacted them to stop the withdrawals to no avail.
13 ECF Nos. 39 at 16-17, ¶¶ 93-95; 59-2 at 2, ¶ 4. According to Plaintiff, her
14 “counsel informed SEIU 775 of the withholdings” and the “[d]ues withholdings
15 ceased promptly thereafter.” Notably, Plaintiff attests that “[i]n both instances, in
16 order to have the deductions stop, [she] had to contact [the third-party contractor]
17 and SEIU 775 numerous times, but did not receive adequate assistance on any of
18 these occasions.” ECF No. 59-2 at 2, ¶ 4. She also avers that she did not receive
19 assistance from Defendants in ceasing dues deduction, but she does not allege that
20 she contacted Defendants. ECF No. 59-2 at 2, ¶ 6.

1 Although Plaintiff was not aware of why the second series of withdrawals
2 began, Defendants have provided an explanation. According to Defendants,
3 beginning on June 28, 2018 – the day after the Supreme Court determined
4 members must affirmatively opt in for dues to be withdrawn – Defendants
5 implemented a temporary procedure for determining whether individual providers
6 had given affirmative consent for withdrawals and began processing withdrawals
7 accordingly. *See* ECF No. 51 at 5-7, ¶¶ 18-30. The process was not without error,
8 however, as Defendants determined that “there were approximately 87 individual
9 providers who likely had dues deductions taken without affirmative consent” as a
10 result of discrepancies in the lists received from SEIU 775; this included the
11 deductions from Plaintiff’s pay in July and August of 2018. ECF Nos. 50 at 5; 51
12 at 7, ¶¶ 22-30. Defendants completed their restructured process by the end of
13 2018. ECF No. 51 at 8, ¶ 34.

14 Plaintiff brought suit on September 24, 2018 against SEIU 775, Defendants,
15 and Defendants’ third-party contractor. ECF No. 1. During litigation, Ochoa
16 settled with SEIU 775 for \$28,000. ECF No. 35. The Court granted the third-party
17 contractor’s Motion to Dismiss, but allowed Plaintiff to file an amended complaint.
18 ECF No. 38. Plaintiff filed the First Amended Complaint (ECF No. 39) and the
19 third-party contractor submitted another Motion to Dismiss. The Court granted the
20 Motion without leave to amend and dismissed the third-party contractor.

1 Now, Defendants move for summary judgment on Plaintiff's only remaining
2 claims. ECF No. 50. Plaintiff opposes the Motion. ECF No. 59.

3 DISCUSSION

4 Defendants Washington State Governor Jay Inslee and Secretary of DSHS
5 Cheryl Strange move the court for entry of summary judgment in their favor. ECF
6 No. 50 at 2. Defendants argue "[t]he Eleventh Amendment bars any claims against
7 State Defendants, except for prospective relief" in federal courts, including claims
8 for violations of state law, and that "Plaintiff lacks Article III standing to seek
9 prospective relief." ECF No. 50 at 2, 8. Defendants otherwise assert that the
10 request for prospective relief should be denied, arguing that "[t]here is no direct
11 link between her alleged injury and the procedures of State Defendants for
12 withdrawal of union dues" and "there is no actual controversy warranting the
13 court's issuance of a declaratory order". ECF No. 50 at 2.

14 Defendants are correct that the Eleventh Amendment bars Plaintiff's suit for
15 damages and violations of state law in federal court, and that Plaintiff can only
16 proceed with her claim for prospective relief. ECF No. 50 at 7-8. Plaintiff does
17 not challenge this. *See* ECF Nos. 50 at 8; 59. This leaves the issue of whether
18 Plaintiff has Article III standing to pursue prospective relief.

19 Plaintiff asserts that she has Article III standing because she is suffering
20 from a present and ongoing injury. Her argument is very limited—she argues that

1 (1) she “is presently forced to employ heightened vigilance in her interactions with
2 the union and State Defendants” because of the Defendants’ “failure to employ
3 minimal safeguards” and (2) there is “a substantial likelihood of identical
4 deprivations in the future.” ECF No. 59 at 13.

5 As to Plaintiff’s first point, she contends that she is “forced to exercise
6 heightened vigilance” because “SEIU 775 has dealt with [her] deceptively in the
7 past” and she “knows that the State Defendants will not, apparently, question any
8 union representation from the union” ECF No. 59 at 13. She states: “What
9 this means, practically, is that she must closely monitor her salary statements.”
10 ECF No. 59 at 13. This is not a sufficient ongoing injury to establish a case and
11 controversy. Having to review one’s salary statements is a *de minimis* burden.
12 Irrespective, the merits of her concern ultimately hinge on whether she has
13 demonstrated a substantial likelihood of a similar deprivation—without the latter
14 showing, there is no reasonable basis for her “heightened vigilance”.

15 Plaintiff has not demonstrated that there is a substantial likelihood of a
16 similar, future deprivation. Plaintiff concedes that, to establish Article III standing
17 for prospective relief, Plaintiff must demonstrate that there is a “sufficient
18 likelihood that [she] will again be wronged in a similar way.” ECF No. 59 at 12
19 (quoting *Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956, 967 (9th Cir. 2018))
20 (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983)). However,

1 Plaintiff's entire argument that she will again be wronged is limited to her
2 statement that "[t]he mere repetitive nature of the violations suggests that they (or
3 similar violations) will occur again" and that "[t]echnological problems happen all
4 the time." ECF No. 59 at 16. This does not come close to meeting her burden.

5 First, Plaintiff ignores the fact that the two series of withdrawals stemmed
6 from completely different events—a forgery and a mistake made during a
7 transition period. As such, her “repetitive nature” argument is misplaced.

8 Second, there is no evidence that a forged authorization will occur again –
9 Plaintiff has only presented one alleged instance in over 6 years in her role as an
10 individual provider. Moreover, as of 2018, SEIU 775 must “submit an attestation
11 of authenticity that a voluntary, affirmative authorization was received from each
12 individual provider listed for a dues deduction[.]” ECF No. 50 at 6. This
13 adequately curbs Plaintiff's concerns about a nefarious actor because SEIU 775
14 now has a vested interest in the accuracy of the information they provide. It is true
15 that Plaintiff is not completely immunized from bad actors, but the constitution
16 does not assure such.

17 Third, her argument that mistakes may happen in the future is pure
18 conjecture, as the process responsible for the second deprivation was a temporary
19 work around that is no longer in effect. This argument falls woefully short of
20 demonstrating a substantial likelihood of a future deprivation.

1 Plaintiff has thus failed to demonstrate she has Article III standing.


2 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 3 1. Defendants Cheryl Strange and Jay Inslee's Motion for Summary
4 Judgment (ECF No. 50) is **GRANTED**. The Clerk of Court shall enter
5 Judgment of dismissal in favor of Defendants Washington State
6 Governor Jay Inslee and Secretary of DSHS Cheryl Strange.
- 7 2. Pursuant to Federal Rule of Civil Procedure 68(a) and ECF No. 35, the
8 Clerk of Court shall enter Judgment against SEIU 775 and in favor of
9 Plaintiff Cindy Ellen Ochoa in the sum of \$28,000 (twenty-eight
10 thousand dollars) inclusive of (1) costs accrued prior to the date of this
11 offer, including reasonable attorneys' fees under 42 U.S.C. § 1988(b),
12 and (2) attorneys' fees not recoverable as costs under 42 U.S.C. §
13 1988(b).

14 The District Court Executive is directed to enter this Order, enter judgment
15 accordingly, furnish copies to the parties, and close the file.

16 DATED October 4, 2019.




THOMAS O. RICE
Chief United States District Judge